

OPINION NO. 2009-003

Syllabus:

2009-003

R.C. 4757.41(A)(5) exempts from regulation under R.C. Chapter 4757 a civil service employee, whether or not licensed under R.C. Chapter 4757, with respect to social work or professional counseling that is performed in the course of his employment as a civil service employee.

To: James R. Rough, Executive Director, Counselor, Social Worker, and Marriage and Family Therapist Board, Columbus, Ohio

By: Richard Cordray, Ohio Attorney General, January 29, 2009

You have requested an opinion of the Attorney General concerning the exemption from R.C. Chapter 4757 of those individuals described in R.C. 4757.41(A)(5). Specifically, you question whether R.C. 4757.41(A)(5) exempts a civil service employee who is licensed by the Counselor, Social Worker, and Marriage and Family Therapist Board (“the Board”) from regulation under R.C. Chapter 4757 with respect to actions taken by that civil service employee in the course of such employment.

R.C. Chapter 4757 regulates the practice of several professions—professional counseling, social work, and marriage and family therapy. According to R.C. 4757.02:

(A) *Except as provided in division (C) of this section and section 4757.41 of the Revised Code:*

(1) *No person shall engage in or claim to the public to be engaging in the practice of professional counseling for a fee, salary, or other consideration unless the person is currently licensed under this chapter as a professional clinical counselor or professional counselor.*

(2) *No person shall practice or claim to the public to be practicing social work for a fee, salary, or other consideration unless the person is currently licensed under this chapter as an independent social worker or a social worker.*

(3) *No person shall claim to the public to be a social work assistant unless the person is currently registered under this chapter as a social work assistant.*

(4) *No person shall engage in the practice of marriage and family therapy or claim to the public to be engaging in the practice of marriage and family therapy unless the person is currently licensed under this chapter as a marriage and family therapist.*

(B)(1) *No person shall use the title “professional clinical counselor,” “professional counselor,” or any other title or description incorporating the word “counselor” or any initials used to identify persons acting in those capacities unless currently authorized under this chapter by licensure to act in the capacity indicated by the title or initials.*

(2) *No person shall use the title “social worker,” “independent social worker,” “social work assistant,” or any other title or description incorporating the words “social worker” or any initials used to identify persons acting in those capacities unless the person is currently authorized by licensure or registration under this chapter to act in the capacity indicated by the title or initials.*

(3) *No person shall use the title “marriage and family therapist” or any initials used to identify persons acting in that capacity unless the*

person is currently authorized by licensure under this chapter to act in the capacity indicated by the title or initials.

(C)(1) Divisions (A)(1) to (3) of this section do not apply to the practice of marriage and family therapy by a person holding a valid license or temporary license as a marriage and family therapist or independent marriage and family therapist under this chapter.

(2) Division (A)(4) of this section does not apply to the following persons licensed or registered under this chapter: professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants. (Emphasis added.)

R.C. 4757.02 thus prohibits anyone, except as provided in division (C) of that section, from representing oneself to the public as, or for a fee, engaging in the practice of professional counseling, social work, or marriage and family therapy, or from representing oneself as a social work assistant, unless licensed or registered in accordance with R.C. Chapter 4757.

The exemption about which you ask is set forth in R.C. 4757.41, in pertinent part, as follows: “(A) This *chapter shall not apply* to the following: . . . (5) *Any person* employed in the civil service as defined in section 124.01 of the Revised Code while engaging in social work or professional counseling as a civil service employee . . .” (Emphasis added.) The language of R.C. 4757.41(A)(5) is clear and needs no interpretation. R.C. 4757.41(A)(5) exempts from regulation under R.C. Chapter 4757 any person, without qualification or exception, who is employed in the civil service, as defined in R.C. 124.01, while that person is engaged in social work or professional counseling as a civil service employee. *See generally Symmes Township Bd. of T’ees v. Smyth*, 87 Ohio St. 3d 549, 553, 721 N.E.2d 1057 (2000) (“[w]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need . . . to apply the rules of statutory interpretation”).

According to R.C. 124.01(A), “civil service” includes “all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state.” Thus, R.C. 4757.41(A)(5) renders the provisions of R.C. Chapter 4757 inapplicable to “any person” who is employed in the service of the state, a county, city, city health district, general health district, or a city school district, but only while that person, in his capacity as a civil service employee, engages in social work or professional counseling. R.C. 4757.41(A)(5) does not limit the exemption established therein to only such persons who are not licensed under R.C. Chapter 4757. Rather, R.C. 4757.41(A)(5) applies to “any person” who is a civil service employee while engaged in social work or professional counseling as part of his civil service employment. If, for example, a person who is employed in the service of the state were to engage in social work or professional counseling outside of his work as a state employee, R.C. 4757.41(A)(5) would not exempt him from regulation under R.C. Chapter 4757 in the performance of such outside activities.

In spite of the plain language of R.C. 4757.41(A)(5), it has been suggested

that R.C. 4757.41(B) renders unclear the meaning of the exception established by R.C. 4757.41(A)(5). According to R.C. 4757.41(B), “[d]ivisions (A)(5), (9), and (11) of this section do not prevent a person described in those divisions from obtaining a license or certificate of registration under this chapter.” The argument appears to be that a person who performs social work or professional counseling as a civil service employee, but who is also licensed or registered under R.C. Chapter 4757, thereby subjects himself to regulation by the Board and waives his exemption under R.C. 4757.41(A)(5). For the reasons that follow, however, we believe that R.C. 4757.41(A)(5), when read together with R.C. 4757.41(B), exempts from regulation under R.C. Chapter 4757 a civil service employee, whether or not licensed or registered under R.C. Chapter 4757, with respect to the activities performed in the course of his employment as a civil service employee.

We first note that the prohibition in R.C. 4757.02 against the unauthorized practice of professional counseling or social work is a criminal statute. *See generally* R.C. 4757.99 (making a violation of R.C. 4757.02 “a misdemeanor of the fourth degree on a first offense; on each subsequent offense, . . . a misdemeanor of the third degree”). Thus, the exceptions to the prohibitions of R.C. 4757.02 must be liberally construed. *See generally State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919) (syllabus, paragraph one) (“[s]tatutes or ordinances of a penal nature, or which restrain the exercise of any trade or occupation . . . will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed; exemptions from such restrictive provisions are for like reasons liberally construed”). Accordingly, the exemption from regulation under R.C. Chapter 4757 of “[a]ny person employed in the civil service as defined in [R.C. 124.01] while engaging in social work or professional counseling as a civil service employee,” R.C. 4757.41(A)(5) (emphasis added), must be read as applying to all such persons described in R.C. 4757.41(A)(5), whether or not such persons are licensed under R.C. Chapter 4757. Under such a reading, civil service employees who are licensed under R.C. Chapter 4757 are exempt from regulation “while engaging in social work or professional counseling as a civil service employee,” but remain subject to regulation while engaging in social work or professional counseling outside of their civil service employment. Moreover, a reading of R.C. 4757.41(A)(5) that would exempt the employment activities of only those civil service employees who are not licensed under R.C. Chapter 4757 would require us to read into R.C. 4757.41(A)(5) language that would establish such limitation, e.g., reading “any person” as meaning “any person who is not licensed under R.C. Chapter 4757.” Such a reading would violate the principle that “the intent of [a] statute is determined by the words used, and that words may not be inserted in or deleted from a plainly worded statute.” *Lorain County Auditor v. Ohio Unemployment Compensation Review Comm’n*, 113 Ohio St. 3d 124, 2007-Ohio-1247, 863 N.E.2d 133 at ¶24 (citation omitted).

Based upon the foregoing, it is my opinion, and you are hereby advised that R.C. 4757.41(A)(5) exempts from regulation under R.C. Chapter 4757 a civil service employee, whether or not licensed under R.C. Chapter 4757, with respect to social work or professional counseling that is performed in the course of his employment as a civil service employee.

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